

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666 (JNE/FLN)

This Document Relates to
ALL ACTIONS

**DECLARATION OF
BENJAMIN W. HULSE IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO
PLAINTIFFS' MOTION FOR
IN CAMERA REVIEW**

Benjamin W. Hulse, being first duly sworn, deposes and declares:

I am one of the attorneys representing Defendants 3M Company and Arizant Healthcare Inc. in connection with the above-referenced matter. I make this declaration in support of Defendants' Opposition to Plaintiffs' Motion for *In Camera* Review.

1. Attached as Defendants' Exhibit A is a true and correct copy of a chart setting forth Defendants' additional responses to the privilege challenges described in Exhibit 1 to the Declaration of Genevieve M. Zimmerman. In addition, Exhibit A includes the information provided to Plaintiffs' on Defendants' amended privilege logs, because in some instances Plaintiffs' Exhibit 2 erroneously included only the information provided in Defendants' original logs. This document is filed under seal.

2. Attached as Defendants' Exhibit B is a true and correct copy of a chart setting forth Defendants' additional responses to the privilege challenges described in Exhibit 2 to the Declaration of Genevieve Zimmerman. In addition, Exhibit B includes the information provided to Plaintiffs' on Defendants' amended privilege logs, because in some instances

Plaintiffs' Exhibit 2 erroneously included only the information provided in Defendants' original logs. This document is filed under seal.

3. Attached as Defendants' Exhibit C is a true and correct copy of a (translated) Regional Court of Cologne Court Order, in the matter of *Arizant Deutschland GmbH v. Augustine Biomedical + Design, et al.*, dated June 2, 2009.

4. Attached as Defendants' Exhibit D is a true and correct copy of a (translated) Judgment from the Cologne Regional Court, in the matter of *Arizant Deutschland GmbH v. Augustine Biomedical + Design, et al.*, dated February 15, 2011.

5. Attached hereto as Defendants' Exhibit E is a true and correct copy of the *In re Bair Hugger*, MDL 2666, Privilege Log Challenge Privilege Name List provided by Defendants to Plaintiffs on or about October 28, 2016.

6. Attached as Defendants' Exhibit F is a true and correct copy of certain excerpts from the Deposition of John Rock.

7. Attached as Defendants' Exhibit G is a true and correct copy of excerpts from the Research & Design Testing Log of Arizant's corporate predecessor, Augustine Medical, Inc., listing forced-air-warming-related tests. This document is filed under seal.

8. Attached as Defendants' Exhibit H is a true and correct copy of a sealed Order issued in the matter of *Johnson v. 3M Co.*, Case No. 14-cv-2044-KHV-TJJ (D. Kan. Nov. 12, 2015). This document is filed under seal.

9. Attached as Defendants' Exhibit I is a true and correct copy of excerpts from the telephonic hearing transcript in the matter of *Walton v. 3M Co.*, No. H-13-CR-1164 (S.D. Tex. Dec. 22, 2015). This document is filed under seal.

10. Attached as Defendants' Exhibit J is a true and correct copy of correspondence and discovery served upon Defendants by Plaintiffs in *Walton v. 3M Co.*, Civil Action No. 4:13-cv-01164. This document is filed under seal.

11. Attached as Defendants' Exhibit K is a true and correct copy of a publication entitled "Forced-Air Warming and Surgical Site Infections: Our Review Finds Insufficient Evidence to Support Changes in Current Practice," ECRI Institute, Guidance Article (April 2013).

12. Attached as Defendants' Exhibit L is a true and correct copy of certain portions of the Deposition of Mark Albrecht.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of July, 2017.

s/ Benjamin W. Hulse
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